THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 962 of 2007

16-04-2007

Between:-

Thakur Shivlender Singh

Petitioner

And

The Municipal Council, Tandur,
Rep., by its Commissioner,
Tandur, Ranga Reddy district.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 962 of 2007

Oral order:

The writ petition is filed complaining of interference by the respondent with the constructions by the petitioner in his residential house at Plot No. 34 in survey No. 137 in Ward No.3, Block No.1 of Tandur town, Ranga Reddy district.

According to the petitioner, he purchased the premises
ad-measuring 240 square yards through a registered sale deed
dated 25-09-2006 from one Mohd. Abdul Raheem. Mr. Mohd. Abdul Raheem purchased this property on 18-05-1999 from one Smt. Shanta Devi. During his ownership of the premises in question, Mohd. Abdul Raheem applied

for permission to construct a house. This was granted by the respondent vide permit No.C/1928/99 dated 27-09-1999. After constructing up to basement level/ground level, Mohd. Abdul Raheem abandoned the construction and sold the property to the petitioner.

In paragraph No.3 of the affidavit filed in support of the writ petition, the petitioner claims to have applied for a building permit on paying the fee of Rs.8,950-00 on 05-10-1986. He was also thereafter requesting the respondent to grant permission. No permission was formally given. After waiting for two months, the petitioner claims to have started construction on 07-12-2006 and asserts that the officials of the respondent have interfered with the construction of the petitioner claiming that a formal permission is required. The petitioner stopped the work afraid of physical action by the officials of the respondent and continued representing for grant of permission. He again started construction on 02-01-2007. The respondent's officials are stated to have again come to the site and forced the petitioner to stop the construction. At that stage, claiming deemed permission and complaining of unlawful interference by the officials of respondent, the writ petition is filed.

S. Suresh Rao asserting to be the Commissioner of the respondent-Municipality has filed a counter affidavit. In paragraph No.2 of the counter affidavit it is asserted that the petitioner started construction without valid

permission and therefore the answering respondent has the authority to stop the illegal construction made without permission. In paragraph No.3 of the counter affidavit, the answering respondent pleads that he issued a refusal memo to the petitioner and that the petitioner received the refusal memo on

05-02-2007. The Commissioner perhaps implies that it is a refusal of the building permit applied for by the petitioner on 05-10-1986. Section 214 of the A.P. Municipalities Act, 1965 reads as under:

> ***Effect of delay in grant or refusal of approval or permission****: If within the period prescribed by Section 212 or Section 213, as the case may be, the Commissioner has neither given nor refused its approval of a building site, or its permission to execute any work, as the case may be, such approval or permission shall be deemed to have been given; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act*.

Under Section 212 of the Act, the Commissioner shall within sixty days after the receipt of any application made under Section 209 for approval of a site or of any information or further information required under rules or bye-laws, by written order, either approve the site or refuse on one or more of the grounds mentioned in Section 215.

Under Section 213 of the Act within sixty days after the receipt of any application made under Section 209 for

permission to execute any work or of any information or of documents or further information or documents required under rules or bye-laws, the Commissioner shall by a written order either grant such permission or refuse on one or more of the grounds mentioned in Section 215 to grant it; provided that the said period of sixty days shall not begin to run until the site has been approved under Section 212.

Section 214 of the Act, as is apparent from the language of the provision enjoins a deemed grant of permission where within the period prescribed under Sections 212 or 213 of the Act the Commissioner has neither given nor refused approval of a building site or permission to execute any work. On such deemed permission, an applicant is at liberty, a liberty consecrated by the specific provisions of Section 214 of the Act, to execute the work but not so as to contravene any of the provisions of this Act or any Rules or bye-laws made under this Act.

Paragraph No.3 of the counter affidavit filed by the respondent is silent as to when the order of refusal of the petitioner's application for building permit was passed. It is stated to have been received by the petitioner on 05-02-2007, beyond the period of 60 days specified in Section 213 of the Act and after a period of deemed permission under Section 214 of the Act.

Sri Polisetti Radhakrishna, the learned standing

counsel for the respondent would state that the Commissioner signed the order of refusal on 03-11-2006. Even Sri Radhakrishna, is unable to state to this Court as to when the respondent was pleased to put into a process of communication (this order) to the petitioner, so as to be out of the reach of the respondent. It is a settled principle that an un-communicated administrative order is not an enforceable order. As long as the respondent does not communicate or put into the process of irretrievable communication an order, the respondent has *locus poenitentiae* to recall his order. This is settled law, ignorance of the respondent on this aspect, notwithstanding.

It is rather unfortunate that the respondent has chosen to file a counter affidavit without even referring to or being sensitized to the specific statutory provisions, of Section 214 of the Act. The respondent has filed the counter affidavit on an assumption that Sections 213 and 214 of the Act do not exist on the statute book and that assumption or misconception is the basis for the respondent's assertion in paragraph No.2, that the petitioner had started construction without valid permission. In paragraph No.4 of the counter affidavit, the answering respondent illustrates such ignorance of law, beyond disputation. The respondent states "…*It is further submitted that Section 214 of A.P. Municipalities Act, 1965 will not start until and unless the application and plan*

approved by the Commissioner of particular municipality. In this case the said approval is not made by the Commissioner as such the plot is not tallying with the sale deed of petitioner for granting permission." This statement by the Commissioner, Municipal Council, Tandur, Ranga Reddy district is in gross infidelity to Section 214 of the Act.

The Officer is seen to have filed a reckless and negligent counter, in a solemn proceedings before the High Court. Such negligence and recklessness wastes valuable public time and of this Court which is mulcted on the tax payer.

At the end of paragraph No.3 of the counter, the answering respondent admits that the officials stopped the construction on
07-12-2006 as the permission was not granted to the petitioner. This is an admission of clear illegal conduct. The petitioner had a deemed provision and the respondent has no authority to stop the construction unless the construction was in deviation of the approved building permission, even so the respondent was obliged to issue a notice.

For all the aforesaid reasons, the writ petition is allowed. The respondent is prohibited from interfering with the petitioner's construction except in accordance with law. The respondent is however at liberty to issue any notice and a formal notice, if the respondent is satisfied

that the constructions in the petitioner's property are in deviation of approved/deemed approved building permission or if the constructions are in violation of any law, rule or bye-law for the time being in force.

Since the respondent has filed a negligent counter, this Court considers it appropriate to allow the writ petition with costs of Rs.10,000-00 (Rupees Ten thousand only) of which Rs.2,500-00 (Rupees two thousand five hundred only) shall be paid to the petitioner and Rs.7,500-00 (Rupees seven thousand five hundred only) to the Secretary, A.P. State Legal Services Authority, Hyderabad within sixty (60) days from today.

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GODA RAGHURAM, J

Dated:16-04-2007
Pvks/*

Nb:- 1.A copy of the counter affidavit of the respondent shall also be appended to this judgment for the purpose of making it a part of the record.

2.A copy of this judgment be communicated to the Chief Secretary to the Government of A.P. for appropriate administrative consideration.

B/o pvks/*